

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANGELA C. WYANT
Claimant

VS.

CONAGRA FOODS
Self-Insured Respondent

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Docket No. 1,013,097

ORDER

Claimant requested review of the March 5, 2004 Award by Administrative Law Judge (ALJ) Bryce D. Benedict. On May 27, 2004 the Appeals Board (Board) placed this matter on the summary docket for disposition without oral argument.

APPEARANCES

Mitchell D. Wulfekoetter, of Topeka, Kansas, appeared for the claimant. Mark E. Kolich, of Lenexa, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ awarded claimant a 5 percent permanent partial impairment to the whole body based upon the opinions expressed by Dr. Jeffrey T. MacMillan. In making this finding, the ALJ disregarded the opinions of claimant's medical expert, Dr. Edward J.

Prostic, after he concluded Dr. Prostic failed to follow the mandates of the A.M.A. Guides.¹ Thus, the claimant's permanency was limited to her thoracic complaints.

Claimant appeals the ALJ's Award arguing that she is entitled to a higher functional impairment. Specifically, that she is entitled to an additional 7 percent functional impairment for her lumbar complaints which she attributes to her compensable accident.

Respondent argues that claimant's medical records do not substantiate her contention that she has suffered from chronic low back complaints following her injury. Accordingly, respondent contends the ALJ's Award of 5 percent for thoracic complaints is consistent with the *Guides* and claimant's consistent complaints of upper back pain.

The sole issue to be addressed is the nature and extent of claimant's functional impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board has reviewed the evidence offered by the parties as well as their written briefs and has concluded the ALJ's Award should be affirmed.

The ALJ compared the medical testimony of Drs. Prostic and MacMillan and concluded Dr. MacMillan's opinions were the most persuasive. He made this finding for two reasons. First, Dr. Prostic failed to utilize the preferred DRE method to rate claimant's impairment. Dr. Prostic justified his reliance on the more liberal range of motion methodology by stating that he prefers it over the DRE alternative.² Second, Dr. Prostic's rating is premised on evidence of radiculopathy. Even given all of claimant's complaints, the Board agrees with the ALJ's finding that claimant has failed to prove it is more probably true than not that she has radiculopathy as a result of her accidental injury. The medical records do not bear out this contention. Her description of her symptoms are, as Dr. MacMillan pointed out, more in the nature of thoracic intercostal muscle spasms rather than true radiculopathy.³

The Board finds the ALJ's analysis to be reasonable and substantiated by the record. Claimant may have injured her low back in her accident but the medical records

¹ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*, (4th ed.). All references are to the 4th ed. of the *Guides* unless otherwise noted.

² Prostic Depo. at 11.

³ MacMillan Depo. at 19.

do not support her claim of chronic lumbar back complaints or true radiculopathy. Dr. Prostic's opinions have failed to persuade either the ALJ or the Board of her contention that she has a permanent impairment in her lumbar back due to her accident. Accordingly, the ALJ's Award is affirmed in all respects.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bryce Benedict dated March 5, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mitchell D. Wulfekoetter, Attorney for Claimant
Mark E. Kolich, Attorney for Self-Insured Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director